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IN THE

Supreme Court of the United States

OCTOBER TERM, 1954

No. 697

BENNIE C. CALDWELL, *Petitioner*,

v.

UNITED STATES OF AMERICA.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

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Petitioner Bennie C. Caldwell, respectfully prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the District of Columbia Circuit entered in the above entitled case on December 23, 1954 (Pet. App. 12).

OPINIONS BELOW

The opinion of the United States Court of Appeals for the District of Columbia Circuit in a two to one opinion, with Judge Washington dissenting, found at Petitioner's Appendix pages 1-7. (218 F. 2d 370)

JURISDICTION

The judgment of the United States Court of Appeals for the District of Columbia Circuit was entered on December 23, 1954 (Petitioner's Appendix 12). Petition for rehearing was denied on February 3, 1955 with Circuit Judge Washington dissenting. Petition for rehearing and reargument before the full court was denied on February 3, 1955 with Chief Judge Stephens dissenting, stating that the cause should be reargued before the full bench (Petitioner's Appendix 15). Chief Justice Warren entered an order extending the time within which to file petition for writ of certiorari to April 4, 1955 (Petitioner's Appendix 15).

QUESTION PRESENTED

1. Does not the dissenting opinion of Circuit Judge Washington correctly state that petitioner was denied due process of law by the erroneous and highly prejudicial instructions of the trial judge who instructed the jury under a Title 18, Section 1503 prosecution that an approach to a member of a jury panel then sitting in a criminal cause with a request to obtain the feelings and opinions of the petit jury constituted a *per se* violation of Title 18, Section 1503 of the U. S. Code, requiring a guilty verdict even in the absence of criminal intent.

CONSTITUTIONAL PROVISIONS, STATUTES AND RULES INVOLVED

1. Constitution of the United States.

2. Fifth Amendment.

3. No person shall be * * * deprived of life, liberty or property, without due process of law * * *.

4. Title 18, Section 1503 of the U. S. Code Annotated:

"*Influencing or injuring officer, juror or witness generally.* Whoever corruptly, or by threats or force, or by any threat-

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ening letter or communication, endeavors to influence, intimidate, or impede any witness, in any court of the United States or before any United States commissioner or other committing magistrate, or any grand or petit juror, or officer in or of any court of the United States, or officer who may be serving at any examination or other proceeding before any United States commissioner or other committing magistrate, in the discharge of his duty, or injures any party or witness in his person or property on account of his attending or having attended such court or examination before such officer, commissioner, or other committing magistrate, or on account of his testifying or having testified to any matter pending therein, or injures any such grand or petit juror in his person or property on account of any verdict or indictment assented to by him, or on account of his being or having been such juror, or injures any such officer, commissioner, or other committing magistrate in his person or property on account of the performance of his official duties, or corruptly or by threats or force, or by any threatening letter or communication, influences, obstructs, or impedes, or endeavors to influence, obstruct, or impede, the due administration of justice, shall be fined not more than $5,000 or imprisoned not more than five years, or both. June 25, 1948, c. 645, 62 Stat. 769."

STATEMENT OF THE CASE

Petitioner and one Daniel Gary were indicted under a multiple count indictment charging violations of Title 18, and Section 1503 and Title 22, Section 701 of the D. C. Code, Title 18, Section 371. Due to the death of the co-defendant all counts but two and four were dismissed, and petitioner went to trial on two counts, one for violating Title 18, Section 1503 and one Title 22, Section 701, D. C. Code (Pet. App. 11). Petitioner was acquitted of the violation of the local D. C. Statute and the only question involved here is the conviction under the Federal Statute, Title 18, Section 1503 Annotated. The count involved in this petition charged petitioner with approaching one Fraction who was a member of the general panel then doing jury service in the United States District Court for the District of Columbia, and offering $1,000 if he would obtain the feelings and opinions of the petit jury

then sitting in the case of *U. S.* v. *Lewis, Bellici and Acalotti*, Cr. No. 476-49 (Petitioner's Appendix 12-13). As set forth in the count of the indictment, a petit jury in the District was then trying the case of *United States* v. *Lewis, Bellici and Acalotti*, Criminal No. 476-49 (Petitioner's Appendix 1-7). Fraction was not a member of the petit jury but a member of the jury panel. The petitioner denied ever approaching Fraction and his defense was alibi. The trial judge instructed the jury that the essential elements to support a conviction under Title 18, Section 1503 of the Code were as follows:

"(1) That there was a trial going on in the United States District Court for the District of Columbia, namely, Criminal No. 476-49, United States v. Lewis, Bellici and Acalotti;

(2) That prior to the verdict the defendant Caldwell, in the District of Columbia, offered Robert C. Fraction money; and

(3) That said money was offered by Caldwell for the purpose of having Fraction find out the feelings or opinions of the jurors sitting in said case.

If you find beyond a reasonable doubt that the defendant offered Robert C. Fraction a sum of money for the purpose of obtaining information as to the feelings and opinions of the jurors sitting in the Lewis case, prior to the verdict, then you are instructed, as a matter of law, that such act was a corrupt endeavor to influence, obstruct, or impede the due administration of justice in this court, and that is all that the Government must prove in order to establish the defendant's guilt under Count I."

(See petitioner's Appendix, opinion of Circuit Court)

The petitioner's counsel objected to the instruction stating that it did not convey to the jury that there had to be a criminal intent on behalf of the petitioner (Petitioner's Appendix 13). The majority of the court, speaking through Judge Edgerton, in affirming the judgment, recognized that the instruction was not "strictly accurate". Cir-

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cuit Court Judge Washington, in a dissenting opinion, stated the instructions of the trial judge withdrew the issue of criminal intent from the jury and deprived petitioner due process of law. Petitioner was sentenced to serve a term of imprisonment of twenty months to five years and a $500 fine.

REASONS FOR GRANTING THE WRIT

The instructions of the Trial Judge in this case on what constituted the essential elements of the offense to support a conviction under Title 18, Section 1503 of the U. S. Code Annotated constituted, as the dissenting opinion stated, was a direct departure from this court's ruling in *Morrissette* v. *United States*, 342 U.S. 246, and is in direct conflict with the ruling of the Fourth Circuit Court of Appeals in *Martin* v. *United States*, 166 F. 2d 76.

ARGUMENT

The importance of the question involved here can be casually discerned by an inspection of the dissenting opinion of Circuit Judge Washington (Petitioner's Appendix 5-7) and by the fact that a motion for rehearing and reargument before the full bench was denied with Chief Judge Stephens dissenting, he being of the view that the cause should be argued before the full court of the Circuit Court of Appeals (Petitioner's Appendix 15). A study of the legislative history of Title 18, Section 1503 and its interpretation by this court illustrates that it was designed to prohibit all corrupt endeavors to obstruct the administration of justice. In this case, the trial judge instructed the jury, as a matter of law, that an approach to a member of a jury panel, and the offering of a sum of money for the purpose to obtain the feelings and opinions of the jury constituted a *per se violation which, as a matter of law, which would justify a verdict of guilty* (Petitioner's Appendix 13). This was incorrect. Before the jury had retired and pursuant to Rule 30 of the Rules of Federal Criminal Pro-

cedure, the following objections to the trial judge's instructions were made:

> "Mr. Ahern: Your Honor, for the record I want to object to Your Honor's instructing the jury as to what constitutes an offense under the first count. I think Your Honor stated in substance that if they find that Caldwell attempted to ascertain the feelings or opinion that would constitute a violation of the statute. We object to that, Your Honor, and say that the jury should have been instructed that they must go beyond that, and that they must find that there was an actual intent to effect it, in the discharge of their duties."

This court, in *Morrissette* v. *United States* stated:

> "Where intent of the accused is an ingredient of the crime charged, its existence is a question of fact which must be submitted to the jury."

Even the majority opinion recognized the inaccuracy of the instructions but ruled the correctness, incorrectness or omission of instructions on the necessity of criminal intent was harmless error since the defense was not one of justification, but of alibi (Petitioner's Appendix 4). However, this court in the Morrissette case affirmed the language of Judge Andrews in *People* v. *Flack*, 125 N.Y. 324, as follows:

> "However clear the proof may be, or however incontrovertible may seem to the judge to be the inference of a criminal intent, the question of intent can never be ruled as a question of law, but must always be submitted to the jury."

The recognition of error in the instructions by the majoirty of the court below and the dissenting judge brings forth this court's admonition in *Bollenbach* v. *U. S.*, 326 U. S. 607:

> "A conviction ought not to rest on an equivocal direction to a jury on a basic issue. And a *charge* deemed erroneous by three circuit judges of long experience and who have a sturdy view of criminal justice is certainly not better than equivocal."

As pointed out in the dissenting opinion, the instructions complained of here were so prejudicial that were there no

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objection this court should apply the doctrine in *Screws* v. *United States*, 325 U.S. 91, and hold petitioner's substantial rights were prejudiced. As the dissenting opinion points out this opinion is also in conflict with the ruling of the Fourth Circuit in *Martin* v. *United States*, 166 F. 2d 76, construed Title 18, Section 1503 as having within it the concept of improper motive and this had to be established before guilt would attach. See *Berkovitz* v. *U. S.* (8 Cir.), 213 F. 2d 468. Here, because the defense was alibi, the majority opinion seeks to sustain a criminal conviction where the issue of criminal intent was withdrawn from the jury. To apply such a doctrine would allow a rape conviction to stand where the defense was alibi and the judge failed to instruct on the issue of consent. The instructions were highly prejudicial and denied petitioner due process of law. Here all judges in Court of Appeals recognized the erroneous instructions of the trial judge that an approach to Fraction constituted an offense as a matter of law. In conformity with this court's supervisory powers over the administration of criminal law in the Federal courts and this court's pronouncement outlined in *Morrissette* v. *United States*, *supra*, it becomes the duty of this court to grant the petition for writ of certiorari and reverse and remand the judgment of the United States Court of Appeals for the District of Columbia Circuit.

CONCLUSION

In this case the petitioner's conviction rests upon erroneous instructions of the trial judge who ruled that an approach to a member of the jury panel with a request to obtain the feelings and opinions of the jury constituted an offense under Title 18, Section 1503 U.S.C.A. *as a matter of law*. This removed the issue of criminal intent from the jury's province and deprived petitioner of due process of law.

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